



Chesapeake Bay Local Assistance Department

CHECKLIST FOR LOCAL PROGRAM COMPLIANCE EVALUATION

Among the powers and duties of the Chesapeake Bay Local Assistance Board outlined in §10.1-2103 of the Code of Virginia is the charge to “[t]ake administrative and legal actions to ensure compliance by counties, cities and towns with the provisions of this chapter including the proper enforcement and implementation of, and continual compliance with, this chapter.” In 1997, the Chesapeake Bay Local Assistance Board adopted an Interim Policy for Reviewing Local Program Implementation. The policy joined The Checklist for the Evaluation of Local Program Elements and the Checklist for Evaluation of Comprehensive Plans as tools the Board has approved for the task of local program review and evaluation. This Checklist for Local Program Phase I Compliance Evaluation continues this process.

This Checklist will be used by the Chesapeake Bay Local Assistance Department to evaluate a number of local program components as required by §10.1-2103 of the Act and §9VAC10-20-250 of the Regulations. The checklist will be completed by CBLAD staff.

The Checklist consists of five parts: A review of the Elements of the Local Program; a review of the policies and implementation related to the Land Use and Development Performance Criteria; a review of Program Administration and Enforcement; a review of Site Plans and a Field Investigation component; and, a Conclusions and Recommendations component.

September 2002

Local Program Background Information

I. Elements of the Local Program (9VAC –10-20-60)

Under the Regulations, local governments are required to “develop measures...necessary to comply with the Act and this Chapter.” Among the measures that are required to be in place at the local level are the elements listed in 9VAC 10-20-60. The following elements of the local program are to be reviewed as part of gathering background information on the local program. Liaisons should examine these elements for consistency with previous Board approvals; to determine if changes to the program element have been made but not yet reviewed by the Board; and, with an eye toward how each element is used in administering the Act and Regulations.

A. CBPA Map

Does the Department have the latest version of the locally adopted CBPA Map?

_____ Yes _____ No If “No,” explain why not.

Are there outstanding Phase I consistency conditions related to the map that have yet to be addressed?

_____ Yes _____ No If “Yes,” list them

Have there been amendments or revisions that have not been reviewed and approved by the CBLAB?

_____ Yes _____ No If “Yes,” list them.

Has the local CBPA Map been digitized? Does the Department have the map in digital format?

_____ Yes _____ No

How is the map used? Is it seen as a general representation of CBPA areas, with site specific delineations required on a lot-by-lot basis, or is the CPBA map used as the final determining factor of CBPA locations?

B. Applicable Land Use Ordinances

What land use ordinances contain the Chesapeake Bay Preservation Area protection measures?

Are there outstanding Phase I consistency conditions related to the ordinance that have yet to be addressed?

_____ Yes _____ No If “Yes,” list them:

Have there been amendments that have not been reviewed and approved by the CBLAB?

_____ Yes _____ No If “Yes,” list them:

C. Comprehensive Plan

What documents constitute the local Comprehensive Plan? (e.g. a land use plan, utilities plan, policy plan, capital improvements plan, etc.)

Are there outstanding Phase II consistency conditions that have yet to be addressed?

_____ Yes _____ No If “Yes,” list them:

II. Chesapeake Bay Preservation Area Designation Criteria

The criteria in this part provide direction for local government designation of the ecological and geographical extent of Chesapeake Bay Preservation Areas.

A. Resource Protection Area

Does the locality have a policy that allows encroachments into the landward 50’ portion of the Resource Protection Area buffer other than on pre –1989 lots?

_____ Yes _____ No

What is the policy? (See Section III.I for further information on buffer equivalency and related topics).

Does the locality include “other lands” under its RPA designation?

_____ Yes _____ No

What constitutes these “other lands”?

a. Resource Management Area

What makes up the locality’s Resource Management Area? Does the locality use the RMA criteria for other “undesignated” land areas?

b. Intensely Developed Area

Does the locality have any Intensely Developed Areas? _____ Yes _____ No

What policies or procedures does the local government have for establishing a vegetative buffer over time?

III. Land Use and Development Performance Criteria (9VAC 10-20-120)

These criteria provide direction for local government designation and management of the Chesapeake Bay Preservation Areas. The liaison should examine the local implementation of the criteria, paying particular attention to the three General Performance Criteria.

A. General Performance Criteria (9VAC 10-20-120(1), (2), and (5))

What policies and procedures has the locality implemented to ensure that no more land is disturbed than is necessary to provide for the desired use or development?

What policies and procedures has the locality implemented to ensure that indigenous vegetation is preserved to the maximum extent possible consistent with the use and development allowed?

What policies and procedures has the locality implemented that ensure that land development minimizes impervious cover consistent with the use and development allowed?

B. Best Management Practices (9VAC 10-20-120(3))

Does the locality use a BMP Maintenance Agreement or equivalent mechanism?
_____ Yes (Attach a copy of the standard BMP Maintenance Agreement) _____ No

What mechanism exists for inspection of the BMP at the time of construction?

What mechanism exists for periodic inspection of the BMP after completion?

Describe the BMP tracking system.

C. Plan of Development Review Process (9VAC 10-20-120(4))

Describe the Plan of Development review process as it relates to developments involving more than 2,500 square feet of land disturbance.

Is the Plan of Development Review process consistent with § 15.2-2286(A)(8) of the Code of Virginia?

_____ Yes _____ No

D. Erosion and Sediment Control Required for 2,500 Square Feet of Land Disturbance (9VAC 10-20-120(6))

Through what process is the local erosion and sediment control ordinance applied to land disturbances of more than 2,500 square feet (including the construction of single family dwellings, and septic tanks and drainfields)?

Describe the erosion and sediment control review and inspection process.

E. Septic Tank Pump Out Program (9VAC 10-20-120(7))

Is there a database of septic tank locations in CBPAs? If not, how are septic tank locations identified and tracked?

____ Yes ____ No

Is there a mechanism for notifying property owners of the mandatory 5-year pump out requirement? Describe the process.

____ Yes ____ No

Has an initial mailing or other notification been done? ____ Yes ____ No

When? _____

What was the response rate? _____

Is follow-up planned?

____ Yes ____ No

What will it consist of?

Have any enforcement cases been undertaken? ____ Yes ____ No
What was the outcome of these cases?

F. Stormwater Management Program and Best Management Practices (BMP) Materials (9VAC 10-20-120(8))

Does the Department have a copy of the local BMP Checklist and a copy of any calculation procedures or locally produced guidance documents?

____ Yes ____ No

Does the Department have a copy of the local BMP Manual (standards and specifications)? ____ Yes ____ No If "No," what standards are used to evaluate designs? _____

Does the locality have specific engineering guidance related to BMP design/construction? ____ Yes ____ No

Describe the BMP design/construction guidance

Does the locality require standard notes and details? ____ Yes ____ No
Describe the standard notes and details.

Describe the BMP tracking database entry form.

Are the BMP inspection schedule and forms complete and adequate?

____ Yes ____ No

Describe the inspection schedule and the procedures used.

Describe the local maintenance requirements for BMPs.

What are the BMP tracking results (the number of BMPs installed, the number of pounds of pollutants the BMPs are designed to remove per year) for the previous year?

Does the locality have a regional stormwater program? ☐ Yes ☐ No

If yes, has the program been approved by the CBLAB? ☐ Yes ☐ No

Describe the program and include a discussion of the accounting method used to apportion rates and any locally produced guidance documents.

Does the locality have a NPDES/VPDES Permit for its stormwater discharge?
☐ Yes ☐ No If "Yes," does it address water quality per CBPA criteria?

If yes, is the administration of the permit compliant with DEQ requirements?
☐ Yes ☐ No

Does the locality have a stormwater management program consistent with the Virginia Stormwater Management Law and Regulations? (describe)?

Does the locality use the default 16% impervious land cover condition in evaluating stormwater management plans? ☐ Yes ☐ No If "No," what percentage impervious land cover is used? How was the amount determined?

Who is responsible for the review of stormwater management plans?

Who is responsible for inspecting and ensuring that BMPs are installed and maintained properly? What are his qualifications?

Does the locality require, track, and inspect BMPs for single-family residences?

_____ Yes _____ No

G. Agricultural and Silvicultural Management (9VAC 10-20-120(9))

Does the locality have a current Memorandum of Understanding with the local Soil and Water Conservation District? _____ Yes _____ No

Does the Department have a copy of the MOU? _____ Yes _____ No

Has the locality supplied the SWCD with a useable copy of the local Chesapeake Bay Preservation Area Maps? _____ Yes _____ No

Has the locality supplied the SWCD with land ownership records (either hard copy, with an update at least once every three years, or digital files)? _____ Yes _____ No

Does the locality have a person designated to attend the SWCD Technical Review Committee Meetings? _____ Yes _____ No

How many meetings have been attended in the past three years? _____

What level of participation does the locality take in Technical Review Committee activities (Liaisons shall contact both the designated attendee and the local SWCD to determine levels of participation).

Does the locality have an enforcement policy relating to agricultural activities covered under the MOU and ordinance? _____ Yes _____ No

Describe the policy

Does the locality provide supplementary funding to the SWCD for implementation of the Chesapeake Bay Agricultural Water Quality program? ____Yes ____No
What is the amount of supplementary funding provided? _____

Does the locality have a listing of farm tracts that have a Soil and Water Quality Conservation Plan? ____Yes ____No

Is there a tracking and follow-up mechanism for prioritizing and identifying landowners that have not signed and/or implemented their Soil and Water Quality Conservation Plan? ____Yes ____No

Describe the tracking and follow-up mechanism for prioritizing and identifying landowners that have not signed/or implemented their Soil and Water Quality Conservation Plans?

Does the locality track violations of the Silvicultural Stream-side Management Zone (SMZ)?
____Yes ____No

What steps are taken when an SMZ violation is noted?

Does the locality inspect re-vegetation efforts? ____Yes ____No
How many SMZ violations did the Department of Forestry (DOF) report to the locality during the past year? _____

H. Wetlands Permitting (9VAC 10-20-120(11))

Does the Department have a copy of any adopted Wetlands Board policies or guidelines? ____Yes ____No

How does the locality insure that all required wetlands permits are obtained prior to grading or other on-site activities for the desired uses or development?

How many wetlands permits were granted during the last year? _____

How many wetlands permits were denied during the past year? _____

How are projects within the RPA requiring a wetlands permit evaluated for consistency with performance criteria?

I. Resource Protection Area Performance Criteria Information (9VAC 10-20-130)

What process is used by the locality to determine stream perenniality?

How many buffer encroachment projects were reviewed during the previous year?

How many buffer encroachment projects were **approved** during the previous year?

How many buffer encroachment projects were **denied** during the previous year?

Does the locality require Water Quality Impact Assessments (WQIAs) to be submitted prior to permitting buffer encroachments? _____ Yes _____ No

Does the locality differentiate between “major” and “minor” WQIAs?

_____ Yes _____ No

What triggers the differentiation?

What are the submittal requirements for a “minor” WQIA?

What are the submittal requirements for a “major” WQIA?

How many of each type of WQIA were reviewed in the past year?

Minor WQIAs _____ Major WQIAs _____

Does the number of WQIAs reviewed correspond to the number of encroachments permitted? _____Yes _____No

If not, explain the discrepancy

What calculations, forms, spreadsheets, or other materials are used to determine mitigation measures?

Does the locality administratively permit development-wide buffer encroachments to 50 feet? _____Yes _____No

Does the locality permit structures to be placed in the landward 50 feet of the RPA buffer when administratively approving encroachments?

_____Yes _____No

What steps does the locality take to ensure that when buffer encroachments are permitted administratively, that the remaining 50-foot buffer is retained in its existing state, with no encroachments or clearing activities?

Does the locality require approval prior to removal of vegetation in the RPA buffer for all desired uses? _____Yes _____No

Does the locality have a written policy for permitting woodlot management and views and vistas? _____Yes _____No

Describe the policies

Does the locality require mitigation and or replacement of vegetation when buffer vegetation is cleared either with or without prior approval? _____Yes _____No

Describe the policies used in designing buffer mitigation measures

Describe the steps the locality takes to ensure the long-term maintenance of RPA features and buffers (i.e., public education efforts, plat notices, etc.)?

Does the locality routinely permit RPA encroachments based on buffer equivalency?
_____ Yes _____ No

If so, how is the equivalency determined?

What process exists for refining the RPA delineation during the POD process?

J. Regulatory Relief Mechanisms (9VAC 10-20- 140 through 160)

Is there an administrative waiver process for **expanding nonconforming structures or building on nonconforming lots**? _____ Yes _____ No

Does the process include a WQIA requirement for buffer encroachments?

Describe the process.

How many administrative waivers for nonconforming structures and/or lots were granted during the past year? _____

How many WQIAs were reviewed in conjunction with these administrative waivers?

Is there a discrepancy between the number of encroachments and the number of WQIAs reviewed? _____ Yes _____ No

If yes, why is there a discrepancy?

Is there a process for administering **exemptions** as permitted under 9VAC 10-20-150(B) and (C)? _____ Yes _____ No

Describe the process.

How many exemptions were permitted during the past year? _____
Generally describe each project (location, amount of encroachment, type of permitted activity, i.e., public road, passive recreation facility, etc.)

How many **exceptions** to the Regulations were considered during the past year?

How many exceptions were granted during past year? _____
Was a WQIA required for each exception considered? _____ Yes _____ No
If not, why not?

If the Chesapeake Bay Preservation Act and Regulations are locally administered through a Zoning Ordinance, do all exception requests go to BZA? _____ Yes
_____ No

If no, how is the process administered?

If the Regulations are implemented through a “stand alone” ordinance, what board or review authority is empowered to grant exceptions?

Describe the **exception** process and provide a sample application for an exception.

IV. PROGRAM ADMINISTRATION AND ENFORCEMENT

A. Development Review Mechanisms

Provide a copy of the application materials for a building permit and E&S permit.
Does the application include information necessary to ensure that Bay Act program requirements are met? ____Yes ____No
If not, what elements are missing?

Provide a copy of the forms used in reviewing applications (checklists, computation sheets, etc.) Is the information adequate to ensure that Bay Act program requirements are met? ____Yes ____No
If not, what elements are missing?

When and by whom are Chesapeake Bay Ordinance compliance inspections undertaken?

B. Complaint Process

Is there a complaint process in place? ____Yes ____No

How many violation complaints related to Chesapeake Bay program elements were received in past year? _____

Describe the process for investigating violation complaints.

What is the process for resolving confirmed violations?
Attach a sample Notice of Violation

How many confirmed violations of the local program resulted in court action?

What was the result of the court cases?

IV. Field Investigation

The local program is only as good as its implementation “on the ground.” In order to accurately gauge the effectiveness of the local program, it is necessary to visit development sites and observe, first-hand, how the various program elements are being used. In order to accomplish this the locality liaison and the local program contact will visit a number of sites representative of the various types of development that can be expected to occur under the Regulations. Not every type of development site will exist in each locality.

The types of development sites to be examined are: new residential subdivisions, new single-family construction, new commercial/office construction, development activity occurring on pre-1989 lots, additions to non-conforming structures, water-dependent facility construction, shoreline stabilization projects, redevelopment activities, sight-line clearing projects, exception sites, and sites upon which an RPA buffer violation has been verified.

Prior to visiting the site, the liaison/engineer will review the site plan and locality file on each project to gauge the site plan’s completeness.

A. Materials to be considered in reviewing plans prior to site visits

(See the Field Investigation Checklist for each development type for additional information).

- i. Preliminary plans and all iterations of plans leading to final approval
- ii. The locally generated review comments
- iii. Calculations and documentation submitted with plans
- iv. WQIA/Exception/Waivers associated with any given plan
- v. Completed CBLAD review checklists
- vi. Inspection reports for erosion and sediment control plans or land disturbing permits

B. Site Visits

From the specific review materials provided as referenced above, and based on discussions with staff, CBLAD will select several sites to visit that exemplify a cross-section of the development types identified above. Field conditions will be compared to those on the plans and the Field Investigation Checklist for each form of development will be completed. Localities should feel free to suggest sites at which they have particular questions or issues they would like clarified.

VI. Conclusions and Recommendations

Based upon the findings outlined in this checklist and the site plan and site visits conducted, the Chesapeake Bay Local Assistance Department staff reaches the following conclusions and recommends that the following activities be undertaken (attach other sheets as necessary):

LOCALITY: _____

REASON FOR COMPLIANCE REVIEW:

- | | |
|--|---|
| <input type="checkbox"/> Board Motion | <input type="checkbox"/> Scheduled Review |
| <input type="checkbox"/> Local Request | <input type="checkbox"/> Other _____ |

MEETING DATES:

____/____/____	_____
____/____/____	_____
____/____/____	_____

DATE COMPLIANCE REVIEW COMPLETED: ____/____/____

Prepared by:

_____	____/____/____
Locality Liaison	DATE

_____	____/____/____
CBLAD Review Engineer	DATE

Reviewed by:

_____	____/____/____ DATE
Chief of Environmental Planning	
_____	____/____/____ DATE
Chief of Environmental Engineering	
_____	____/____/____ DATE
Principal Planner	

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